
THE CORPORATION JOURNAL

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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in the organization, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

Making The Corporation Journal a Representative Publication

THE gratifying reception which THE CORPORATION JOURNAL has met with in the course of the last decade has prompted us to broaden the scope of its usefulness by adding several new features, at the same time enlarging existing departments and making the publication more readable by carefully revising its old typographical arrangement.

Unfortunately, the long-continued printers' strike in New York City has—in addition to hampering the inauguration of these changes—forced us to publish this combined October-November-December number in place of three separate issues.

As soon as printing facilities return to normal, we plan to make THE CORPORATION JOURNAL fully representative of the high standards which have characterized our business since its inception in 1892.

THE CORPORATION TRUST COMPANY

37 Wall Street, New York

Affiliated with

The Corporation Trust Company System

15 Exchange Place, Jersey City

Organized 1892

Boston, 53 State Street
(Corporation Registration Co.)
Chicago, 112 W. Adams Street
Pittsburgh, 1202 Oliver Bldg.
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(The Corporation Company)

WHAT THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES DO

Departments

Corporation Department—Assists attorneys in the organization of corporations and in the licensing of foreign corporations in every state and in the provinces of Canada.

Report and Tax Department—Attends for attorneys to corporation reports and tax matters in every state and in every province of Canada.

Legislative Department—Reports on pending legislation; furnishes copies of bills and new laws enacted by Congress.

Trust Department—Acts as trustee under deed of trust, custodian of securities, escrow depository and depository for reorganization committees.

Transfer Department—Acts as registrar and transfer agent of stocks, bonds and notes.

Federal Department—Reports decisions of the United States Supreme Court, rulings of the Interstate Commerce Commission, Federal Trade Commission, Bureau of Internal Revenue and Federal Reserve Board and other Government Departments.

Furnishes agent at Washington for common carriers to accept service of orders, process, etc., of Interstate Commerce Commission.

Services

These are loose leaf binder Services containing, in addition to the respective Acts as amended and now in effect, all official matters, in force, issued since the passage of the respective original Acts, compiled, cross-referenced, and indexed, and kept up to date at all times by means of additional sequentially numbered printed pages sent to subscribers under first-class postage. Formal regulations, informal rulings, Supreme Court decisions, and lower court cases are embodied in these Services.

Federal Income Tax Service—Covers the Federal Income Tax Law and the official regulations, etc., bearing thereon.

Federal War Tax Service—Covers practically all the strictly Internal Revenue Tax Laws, except the Income Tax Law, due to the war, and the official regulations, etc., bearing thereon. (Does not touch on beer, wine, spirits, soft drinks, tobacco, narcotics or child labor.)

Federal Reserve Act Service—Covers the Federal Reserve Act and the official regulations, etc., bearing thereon.

Federal Trade Commission Service—Covers the Federal Trade Commission Act and the Federal Anti-Trust Act (the Clayton Act) and the official orders, rulings, complaints, etc., bearing thereon.

New York Income Tax Service—Covers the New York Personal and Corporation Income Tax Laws and the official regulations, etc., bearing thereon.

The Corporation Journal

The object of *The Corporation Journal* is to furnish corporation attorneys, and others interested, with a brief account of current happenings, recent court decisions, new laws, etc. Lengthy discussion is avoided, the purpose being to make the publication a memorandum for the busy attorney upon which he may rely for accuracy and to which he may conveniently refer. Cross references are made to preceding pages and a cumulative index is issued from time to time. The *Corporation Journal* is issued monthly except in July and August, and it is sent without charge to those requesting that their names be placed upon the mailing list.

THE CORPORATION JOURNAL

Edited by John H. Sears

VOL. IV, No. 93 OCTOBER-NOVEMBER-DECEMBER, 1919

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Important Legislation Expected During Second Session

The Sixty-sixth Congress, when it reconvenes at noon on December first, will be confronted with many important economic problems—all clamoring for a speedy solution. Recognizing the urgent need of effective remedial measures, it will undoubtedly give these problems the attention which prolonged consideration of the Peace Treaty prevented during the first session.

Representative Fordney, Chairman of the Ways and Means Committee, has announced that a general revision of the tariff, schedule by schedule, will be begun during the second session, probably early in February. Then, too, the bills that have already passed the House, but



Our Congressional Service serves not only as a dependable source of information concerning the daily progress of impending legislation, but also as an invaluable index to business conditions.

not the Senate, will come before the latter for action. In addition to tariff, legislation will be considered to prevent the dumping of foreign made goods on the American market. Bills dealing with this subject have been introduced by Senator Smoot and Representative Fordney.

A fixed policy for the maintenance of our merchant marine will also be adopted. The consensus of opinion among Republicans is believed to favor a privately-owned merchant marine with Government "encouragement."

Legislation for the reorganization of the railroads is of course a certainty. The mooted points which will doubtless cause much

controversy in both Houses are the anti-strike provision and the propriety, if not the constitutionality, of the taking by the Government of profits in excess of a fixed per centum, probably 7%.

Regulation of the transmission of intelligence may also be considered.

Further development along lines of Government license of "big business" and Federal incorporation are expected. Both of these methods for wider Government control loomed large during the first session.

Establishment of foreign credits to finance trade transactions with impoverished Europe, through the instrumentality of Government and private agencies will undoubtedly be undertaken. An important step in this direction is the Edge Bill, S. 2472, which has already passed both

Houses, and is now in the hands of a conference committee. Early action is expected during the second session.

There will be the usual appropriation bills.

"Blue Sky" legislation, and further trust legislation, upon which the Federal Trade Commission has been so insistent, will receive close attention.

Further agitation for the regulation of the packers is probable, but it is very doubtful if any legislation will result. There is every reason to believe that the Haugen Cold Storage Bill, H. R. 9521, which has passed the House, will become a law.

The increased number of labor disputes with the subsequent reduction in output and increase in cost of living should be one of the most vital matters considered during the second session.

The President in His Message of December 2 Says:

"I trust that the Congress will give its immediate consideration to the problem of future taxation. *Simplification of the income and profits taxes has become an immediate necessity.* These taxes performed indispensable service during the war. They must, however, be simplified, not only to save the taxpayer inconvenience and expense, but in order that his liability may be made certain and definite."

* * * *

"It is of the utmost importance that in dealing with this matter the present laws should not be disturbed so far as regards taxes for the calendar year 1920, payable in the calendar year 1921. The Congress might well consider whether the higher rate of income and profits taxes can in peace times be effectively productive of revenue, and whether they may not, on the contrary, be destructive of business activity and productive of waste and inefficiency. There is a point at which in peace times high rates of income and profits taxes discourage energy, remove the incentive to new enterprise, encourage extravagant expenditures and produce industrial stagnation with consequent unemployment and other attendant evils."

Domestic Corporations

Delaware

Evidence of Right to Vote at Election of Directors. The stock ledger of a corporation, under General Incorporation Act Section 29, is the only evidence as to who are stockholders entitled to vote at an election of directors. *Schultz v. Commonwealth Mortgage Co.*, 107 Atl. 774.

Order by Chancery Court for Election of Directors. By section 31 of the General Incorporation Act, the Chancellor may summarily order that an election be held if an election shall not have been held on the day designated by the by-laws of the company. But the Chancellor will not summarily order that an annual election of a corporation be held if it appears that one has in fact been held on the day designated by the by-laws, though it appear that since such election shares voted had been judicially cancelled. *Schultz v. Commonwealth Mortgage Co.*, 107 Atl. 774.

Appointment of Receiver. The United States District Court for the Eastern District of Kentucky holds that the discretion given by the Delaware law, to appoint a receiver whenever a corporation shall be insolvent, will not be exercised where the corporation is not "insolvent" in the sense that its liabilities exceed its assets, though it may be unable to meet its obligations as they become due, where no mismanagement by the officers is shown. *Sill v. Kentucky Coal & Timber Development Co.*, 259 Fed. 366.

Ohio

An Unincorporated Association Authorized to Conduct Its Business After the Manner of Corporations Is Subject to Quo Warranto Proceedings. Section 12303 of the General Code of Ohio, 1910, provides that: "A civil action may be brought in the name of the State . . . against an

association of persons who act as a corporation within this State without being incorporated." In an opinion to the Commissioner of Securities, the Attorney General holds that this provision applies to a syndicate formed for the purpose of acquiring property to be held by a trustee who, pursuant to the terms and in the manner authorized by the trust agreement is to engage the property and its income and proceeds in conducting a multitudinous and almost unlimited line of business. (Opinion No. 575, Attorney General of Ohio—not yet officially reported.)

Massachusetts

No Vested Right in Stockholders to Subscribe for New Stock. The Supreme Judicial Court, holds: "There is no vested right in stockholders to subscribe for an issue of new stock. *Attorney General v. Boston & Maine Railroad*, 109 Mass. 99. The issue of new stock may be upon such terms as is voted by the stockholders within the scope of legislative sanction. *Hole v. Cheshire Railroad*, 161 Mass. 443, 37 N. E. 307." *Brown v. Boston & M. R. R.*, 124 N. E. 322.

Mississippi

Features of the Mississippi Corporation Laws. The organization tax is high, but there is no annual franchise tax; the charter must be published for three weeks; two incorporators are sufficient, they need not be residents. No limit is placed on the amount of authorized capital stock or par value of shares, nor is there any provision requiring that a certain portion of the capital stock be paid in; directors are not required to hold their meetings in the State; corporations may determine the number of shares that shall entitle a member to vote. Corporate existence is limited to 50 years; manufacturing corporations cannot hold real estate exceeding \$2,000,000 in

value; other corporations cannot hold real estate exceeding \$1,000,000 in value; trading corporations cannot borrow money in excess of the amount of paid-up stock and if any corporation owning property in the State contracts debts beyond the par value of its stock any creditor or stockholder who is a citizen of the State may file a bill in the Chancery Court having jurisdiction and have its affairs, by decree of the court, wound up and its assets in the State distributed; a corporation cannot hold stock in a competing corporation carrying on the same kind of business; stock can be issued for property only at its actual value; stockholders meetings must be held in the State. The corporation laws of Mississippi are silent on such important subjects as the power to do business in other States, number of directors, executive committee, location of principal office, increase or decrease in capital stock, corporate books, etc.

Cost of Organization is as Follows:
Fees to Secretary of State:

Recording charter—

(On capital stock of not more than \$10,000.....	\$20
Over \$30,000 but not over \$30,000	40
Over 50,000, \$60 plus 1/10th of 1% on excess over \$50,000, provided no fee shall be more than \$250.	
Certified copy (if desired).....	10
Advertising charter for 3 weeks (usually \$3 for each 100 words).	
Fee to Clerk of Chancery Court—	
Recording charter (25c for hundred words, but not less than \$2.50).....	3

Taxation. There is no annual franchise tax. ("Privilege Taxes" are imposed on certain occupations.)

Procedure for Incorporation. The persons desiring to be incorporated apply to the Secretary of State for the necessary blank form of application for charter which is filled out and signed by each of the incorporators and acknowledged before a Notary Public or other officer authorized, to take acknowledgments to deeds. Two incorporators are suffi-

cient; they need not be residents. The application for charter is published for three successive weeks in one or more newspapers published at the domicile of the proposed corporation; or if there is not a newspaper published in such county, then in one or more newspapers published in the State and having a circulation in the county of the domicile of its proposed corporation. The application, with proof of publication, if required, is forwarded to the Secretary of State with the fee for recording and certifying the same. The Secretary of State endorses it, and the Attorney General endorses his opinion thereon and refers it to the Governor for approval. If he approves it then the Secretary of State records and certifies it and transmits it to the applicants. The Secretary of State is required to send with each charter a bank form for report of organization which is filed within 30 days after organization. If the Governor disapproves it (the application for charter) the Secretary of State files it in his office and notifies the applicants of the disapproval and the reasons therefor, and they may amend the same so as to meet the objections if they see fit. The powers specified in the charter shall, by approval, be vested in such corporation, and it shall go into operation at the time and on the terms and conditions specified.

The charter must then be recorded in the office of the Clerk of the Chancery Court of the county in which the principal office or place of business is located.

The first meeting, unless otherwise provided for (the law makes no other provision) may be called by a notice, signed by one or more persons named in the charter, published in some convenient newspaper for at least 10 days before the time appointed for the meeting, and the meeting when assembled may proceed to organize the corporation.

Within 30 days after such organization, the corporation must make report thereof to the Secretary of State upon the blank form sent with the charter. The report of organization which is signed by the president and certified by the secretary shows the date on which the corporation was

organized by the election of directors and their election of officers. Failure to file this report within the required time renders the charter null and void and all persons doing business thereunder liable as partners.

What The Corporation Trust Company Does to assist attorneys in the incorporation and subsequent statutory maintenance of a Mississippi corporation is briefly as follows:

At the time of incorporation it ascertains, upon request, if the name can be used, files and records the necessary papers, and assists the attorney in every possible way in the organization. Approved copies of applications for charter are on file in our offices for reference.

It will draft and submit the application for charter, by-laws, and minutes of meetings and upon approval by the attorney will furnish complete facilities for incorporation, attend to the publication, filing and recording of papers, the holding of the necessary meetings and return the records completed in minute book form.

Attorneys wishing to keep complete control and supervision over the organization of Mississippi corporations have found it extremely convenient and expedient to confer with the nearest office of The Corporation Trust Company System and to employ the services of its representatives in Mississippi.

Subsequent to incorporation, The Corporation Trust Company furnishes rooms for holding stockholders' meetings or holds the meetings by proxy, gives timely notice for filing State reports and tax returns and keeps counsel informed of changes in statutes affecting the corporate status.

An estimate of charges can be secured at the nearest office of The Corporation Trust Company System.

New Jersey

Corporation May Not Purchase Its Own Capital Stock Except From Surplus. Jane N. Maguire was the widow of Frank N. Maguire, and insisted upon being employed by O'Gara & Maguire, Incorporated, in which cor-

poration her husband left her stock. In order to place themselves in a position gracefully to deny this request, the corporation purchased her stock, giving promissory notes in payment. Before the notes were entirely paid, the corporation was adjudged a bankrupt. The United States District Court for New Jersey holds that the widow is not entitled to an order for payment of the balance due on the notes, but must stand aside until the claims of other creditors are satisfied in full, if there are sufficient funds to satisfy their claims. A corporation may purchase its own capital stock only out of surplus. It is not sufficient merely that it has a surplus when the contract of purchase is made. "A stockholder, who sells his stock to the company that issued it, without receiving cash therefor out of surplus earnings and accumulated profits, must take the responsibility and assume the risk that payment at some future day will not impair the capital stock." In re O'Gara & Maguire, Inc., 259 Fed. 935.

New York

Usury and Corporate Mortgages. Payment of a bonus to one loaning money to a corporation on its bond and mortgage, in the absence of evidence that it was a party to the illegal payment, does not render the mortgage usurious. Aside from this consideration, section 374 of the General Business law provides that a corporation may not interpose a defense of usury. *Salvin v. Myles Realty Company et al* (N. Y. Court of Appeals).

Formation of Corporation for Employing Physicians to Examine Eyes and Prescribe Glasses. The Attorney General of New York says: "Under the Business Corporation Law of the State of New York, corporations cannot be formed to practice professions. As the examination and treatment of the eye is a profession, I think the same rule would apply as that laid down in the case of *Matter of Cooperative Law Company*, 198 N. Y. 479." Opinion of the Attorney General, 21 N. Y. State Dept. Rep. 75.

Virginia

Non Par Value Law Amended. Virginia has enacted a new law for the issuance of shares without par value by Virginia corporations, and has provided for the admission of foreign corporations having shares without par value.

The new law went into effect September 5, 1919, and reads as follows:

"1. Be it enacted by the General Assembly of Virginia, That any corporation organized or to be organized under the laws of this State, except banks, trust companies and similar corporations (primarily intended to derive profit from the loan or use of money) may, in its original certificate of incorporation, articles of association or any amendment thereof, or in any agreement of merger or consolidation with any other corporation, provide for the issue of all or any class of shares of stock in such corporation without nominal or par value by stating therein the number and classes of shares that may be issued without nominal or par value, each share of the same class to be equal in every respect to every other share of such class, entitled to equal vote and dividends, and, in case of distribution of the assets, whether voluntary or otherwise, to the same amount out of the assets of such corporation as every other share of such class, subject to such preferences in favor of other classes of stock, if any, as may be therein stated.

"2. That if there be more than one class of stock created in such certificate of incorporation, articles of association or any amendment thereof, or in any agreement of merger or consolidation, designation shall be made of the different classes thereof, and if any of such shares be preferred as to voting power or as to their distributive right in the profits of the corporation, or in the assets thereof, upon distribution, whether voluntary or otherwise, statement shall be made of the number of shares of such stock having such preferences and the character thereof, and if preferred as to

their distributive share in the assets of the corporation, the amount in dollars as to which each such share shall be preferred over the shares of any class of stock.

"3. In any case in which it is otherwise required by law that the par value of the shares of a corporation be stated, but the shares of such corporation are without nominal or par value, there shall be stated in lieu thereof that such shares are without par value; and when in any case the maximum or minimum amount of the capital stock of a corporation and its division into shares is required to be stated, but the shares of such corporation are without nominal or par value, there shall be stated in lieu thereof the maximum and minimum number of such shares and also that such maximum and minimum number of shares are without par value.

"4. That any foreign corporation, all or any class of the shares of stock of which are without nominal or par value, may procure a certificate of authority to do business in this State by complying with the requirements of the laws thereof respecting the qualification of foreign corporations, upon the payment of an entrance fee required to be paid by such other foreign corporations, the amount of which is to be ascertained and determined as provided in the fifth section of this Act.

"5. For the purpose of ascertaining and determining the amount of any charter fee, registration fee or franchise tax now or hereafter imposed by law upon the maximum amount of authorized capital stock of any such corporation organized under the laws of this State, or for the purpose of ascertaining and determining the amount of any entrance fee now or hereafter required to be paid by any foreign corporation for the purpose of procuring a certificate of authority to do business in this State, or the amount of any annual registration fee required to be paid by such foreign corporation, but for no other purpose, such shares of stock without nominal or par value shall be taken to be of the par value of one hundred dollars each.

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Shares without par value are increasing in popularity. The many advantages which shares without par value have over those with par value are more than apparent during the present period of uncertain and fluctuating values, and the board of directors is not required to assume the responsibility of placing a value upon the consideration for the issue of stock equal to any par value. With the dollar mark removed, the share without par value finds its natural price level as does any other species of property, and the purchaser is not deceived by any false or fictitious amount on the face of his certificate.

Our Corporation Department finds that the tendency is to organize this class of corporation in Delaware. Among the principal reasons for the choice of this state are the absence of any provisions requiring a statement in the certificate of incorporation of an amount of capital with which the corporation will carry on business, which in other states is usually required and must be paid in before the company begins business or incurs any indebtedness, and the extreme liberality of the law as to the consideration for the issue of stock.

Some of the larger companies organized through our office in Wilmington, Delaware, with the number of shares without par value, are as follows:

Name of Company.	No. of Shares.
Radio Corporation of America.....	5,000,000
Union Oil Company.....	5,000,000
International Trademark Corporation.....	4,250,000
Transcontinental Oil Company.....	2,000,000
Steiner Oil Corporation.....	500,000
Acme Cement Corporation.....	13,500
Willys Corporation	500,000
L. K. Steel Company.....	100,000
National Pictures Theatres, Inc.....	100,000
A. T. Securities Corporation.....	3,000,000
Mercer Motors Company.....	110,000
Rolls Royce of America.....	75,000
National Exploration Company.....	1,000,000
Bethlehem Spark Plug Corporation.....	100,000
Manhattan Oil Company.....	300,000
Consolidated Textile Corporation.....	1,000,000
Howe Rubber Corporation.....	140,000
Loft, Incorporated	650,000
Atlantic Lobos Oil Company.....	500,000
Buddy Buds, Incorporated.....	200,000
Coca-Cola Company	500,000
Goldwyn Pictures Corporation.....	200,000
U. R. S. Candy Stores, Inc.....	1,250,000
General Tractors, Incorporated.....	500,000
American Ship & Commerce Corporation.....	1,500,000
Brazos Oil Corporation.....	500,000
Bethlehem Motors Corporation.....	130,000
Allied Packers, Inc.....	450,000

United Picture Producers' Corporation.....	300,000
Consolidated Cigar Corporation.....	90,000
Standard Tank Car Corporation.....	100,000
America Malt & Grain Company.....	55,000
Chestnut & Smith Corporation.....	162,500
Pioneer Steamship Corporation.....	150,000
Replogle Steel Company.....	500,000
Record Tire Manufacturing Company.....	50,000
Faps Oil Corporation.....	100,000

The only states in which a corporation having shares without par value cannot secure a license to do business are Missouri, Washington and New Mexico.

Foreign Corporations

Arkansas

Qualification After Contract But Before Suit, Is Effective. Act No. 313, Acts of 1907 of Arkansas, after prescribing a penalty of a fine of not less than \$1,000 for failure to comply therewith, provides: "As an additional penalty any foreign corporation which shall fail or refuse to file its articles of incorporation or certificate as aforesaid, cannot make any contract in this State, which can be enforced by it either in law or in equity and the complying with the provisions of this act after suit is instituted shall in no way validate said contract." The Supreme Court of Arkansas holds that compliance with this act before suit is sufficient to enable a foreign corporation to enforce a contract entered into prior to compliance. *J. R. Watkins' Medical Co. v. Mosley*, 213 S. W. 385.

Illinois

Unqualified Foreign Corporation May Not Sue In State Courts. The Supreme Court of Illinois says: "This court has uniformly held that a foreign corporation which has not complied with the conditions prescribed for transacting business in this State cannot maintain an action in the courts of the State. *Cincinnati Mu-*

tual Health Assurance Co. v. Rosenthal, 55 Ill. 85, 8 Am. Rep. 626; *Supreme Sitting Order of Iron Hall v. Grigsby*, 178 Ill. 57, 52 N. E. 956; *Thompson Co. v. Whitehead*, 185 Ill. 454, 56 N. E. 1106, 76 Am. St. Rep. 51. The Legislature has power to impose such conditions upon foreign corporations for the exercise of powers or privileges in this State, as it may choose, and such conditions must be complied with. *Illinois Trust Co. v. St. Louis, Iron Mountain & Southern Railway Co.*, 208 Ill. 419, 70 N. E. 357." *Indiana Harbor Belt R. Co. v. Green*, 124 N. E. 298.

Kentucky

Taking Subscriptions to Its Own Stock Does Not Constitute "Doing Business" by a foreign corporation so as to require its compliance with the foreign corporation laws as a condition precedent to validity of the subscriptions. The word "business" in the statute means the business for which the corporation was organized, and not the taking of stock subscriptions to procure the capital necessary to carry on the business. *Hanger v. International Trading Co.*, 214 S. W. 438.

New York—Defense of Failure of Foreign Corporation to Qualify is Favored. See page 76.

Taxation

A RECENT announcement by the Bureau of Internal Revenue of the Treasury Department is to the effect that the necessary forms for use in making returns for Federal income tax and excess profits tax purposes would be issued early in December—skeptics will remember that Congress convenes on December first—in order that taxpayers may have ample time, prior to the filing due date, i. e., on or before March 15, 1920, generally, during which to prepare the necessary complete and oft-times very complicated data desired and called for by the Bureau as an aid to it in determining whether or not the taxpayer is properly computing the statutory income subject to tax. This recalls to mind the chaotic condition which existed universally last year, not only among taxpayers, but equally among those on whom was imposed the duty of administering the tax laws. The Revenue Act of 1918 did not become law until February 24, 1919. In addition to the income tax and excess profits tax laws, the Bureau was called on to interpret and administer many entirely new and perhaps as many more amended old provisions of law relative to taxes covering a wide range of articles and activities, and hence it would be unfair in-

deed to criticize it and to hold it to blame for the almost intolerable confusion that developed.

Many of the provisions of the income tax and excess profits tax laws are new to the present Revenue Act. These provisions do not reflect minor changes, but rather changes in fundamental principles of vast importance to the taxpayers. As the great majority of the taxpayers of the country make their returns on a calendar year basis, most of the tax returns for the taxable year 1918 were due within less than a month after the passage of the Act. The Bureau of Internal Revenue issued its preliminary edition of Regulations 45 on March 5, 1919, this being about a week after Form 1040, for the use of individuals, was issued. The Corporation Return Form No. 1120 followed about a week later. In the meantime, provision had been made for the use of tentative returns to form the basis, temporarily, of the first tax installment payment. On April 17 the revised edition of Regulations No. 45 was issued. It was inevitable that, because of the many new provisions of law to be covered and because of the limitations of time, the necessity for modifications in the forms, and for modi-

(Continued on page 70)



Above is shown a corner of the officers' section in our New York office, where we assist attorneys in the organization of a very large percentage of all corporations formed in the United States.



Several valuable reprints, if requested, will accompany detailed information regarding this specialized service.

THE Corporation Trust Company and its affiliated System constitute a nation wide organization with offices in the principal cities and with representatives in all states and in the provinces of Canada. These facilities, supplemented by a comprehensive experience embracing more than twenty-seven years of co-operation with attorneys engaged in all forms of corporation work, enable us to render a service unique in scope and character.

To a large extent we attribute the steady development of The Corporation Trust Company System to our rigid adherence to self-imposed restrictions for the promotion and protection of the interests of attorneys everywhere. Never once in the organization, qualification, statutory representation, and maintenance of corporations have we departed from our policy of dealing exclusively with members of the bar.

THE CORPORATION TRUST COMPANY

New York

Three-quarters *of the* Nation's Corporation Business

The aggregate capital of corporations organized in Delaware during July was \$1,350,000,000—fully 80% of the nation's total. Charters involving more than three-quarters of this staggering sum passed through our Organization Department. In other states, too, our position was highly impressive.

On only one other occasion did we handle a larger volume of organization business. That was in April, 1901—the banner year in corporation history—when of \$1,619,000,000 recorded, well over one billion dollars passed through our hands.

A tribute to the efficiency of our service is the fact that each year we assist attorneys in the organization of a very large percentage of all corporations formed in the nation's leading charter-granting states.

THE CORPORATION TRUST COMPANY
New York

fied interpretations of the law as reflected in the Regulations, should develop. As a result of more mature study of the law provisions by the Commissioner and his assistants, aided by the assistance of taxpayers themselves by way of helpful suggestion, as well as by the experience of the administrative officials during the year, the basic regulations relating to the income and excess profits tax laws have been undergoing almost constant revision. Already many important changes, far reaching in their application and effect, have been made. In the months to come many more modifications of officially promulgated interpretations found to be unsound or too drastic or without sufficient elasticity may be looked for. At no other time, perhaps, has it been as essential—and it was certainly never more essential than now—for counsel to be in close touch with the latest officially expressed attitude of the Treasury Department toward the very intricate new provisions of the taxing laws which are embodied in the Revenue Act of 1918.

This necessity is well illustrated by the recent amendment of Article 1566 of Regulations No. 45, Revised, by Treasury Decision 2924, issued September 26 [Income Tax Service, page 509]. It will be recalled that this Article, as originally promulgated on

April 17, 1919, was considered as not being warranted in law, and consequently the Bureau annulled, among others, the provision to the effect that if on the transfer of property to a corporation for its stock, 50% or more of the stock issued therefor remained in possession of the prior owner of the property, no taxable income was held to accrue to him by virtue of the transaction.

Belief has been expressed that some of the provisions of the immediately succeeding article of Regulations 45, namely, Article 1567, as amended by T. D. 2870 on June 20, 1919, and as further amended by T. D. 2924 on September 26, 1919, are likewise unwarranted in law, and that the principle enunciated in the statement, relative to non-par value stock, added to the article as issued in the revised edition of April 17, 1919, of Regulations 45, was sound. This Article relates to the exchange of stock for other stock of no greater par or face value in the case of reorganizations, mergers or consolidations. The regulation provides that non-par value stock as generally issued will, for the purpose of Section 202(b) of the Act, be deemed to have a par value representing an aliquot part of the amount fixed in the corporation's certificate of incorporation, or on its

books of account, or otherwise, as capital, or of an amount of stock to be issued which may not be impaired by the distribution of dividends, proper account being taken of any preferred stock issued with a preference as to principal. It is further provided that in the case (if any) where the issuance of non-par value stock is authorized, but with no such specific provision as to amount of capital, or as to dividend distributions, such non-par value stock shall in fact be deemed to have no greater aggregate par or face value than any stock or securities taken in exchange. Incidentally, there seems to exist in the minds of many who have given much consideration to the matter, the thought that the statutory provisions embracing the issuance of stock without par value in such states as Delaware and Maryland, for instance, are such as to place such non-par value stock within this very much qualified special amended interpretation by the Bureau. That it is believed by many that such stock has "in fact no par or face value" as set forth in Article 1567 may be responsible for what has seemed to be rather unusually heavy organization records available of late at the offices of state officials. This is particularly true of Delaware. That portion of Article 1567, however, which is referred to above,

as being considered by some as unwarranted in law, perhaps, is that which brings stock of no par or face value within the provisions of Section 202(b) relating to reorganizations, mergers or consolidations. The Act specifies in Section 202(b) that on the exchange of property for property, the property received in exchange shall, for the purpose of determining gain or loss, be treated as the equivalent of cash to the amount of its fair market value, if any. This is followed, in the law, by the exception relating to reorganizations, mergers or consolidations, which provides that in such cases if a person (and "person" includes partnerships and corporations as well as individuals) receives in place of stock or securities owned by him new stock or securities of no greater aggregate par or face value, no gain or loss occurs, the new securities being treated as taking the place of the stock, securities or other property exchanged. The argument is that when Congress wrote this provision into the law it was well aware of the fact that several of the states (there were then but six such states, although at present there are twelve) make statutory provision for the issuance of stock without par value. Indeed the Revenue Act of 1918 itself in Titles III and XI mentions, in terms, non-par value stock. It is

interesting to note, in this connection, that in the excess profits tax law, Section 325(b), stock of no par value is recognized by the use of the following language:

"(b) For the purposes of this Title (that is, Title III of the Revenue Act of 1918, covering the War Profits and Excess Profits Tax Law), the par value of stock or shares shall, in the case of stock or shares issued at a nominal value or having no par value, be deemed to be the fair market value as of the date or dates of issue of such stock or shares."

As an interjection, it may be suggested that the use of the word "nominal" in the above quotation is an interesting subject for contemplation and discussion. Although we believe that persistent effort has been made to secure from the Treasury Department an official interpretation of the meaning of the word "nominal" as here used, this has, as far as we are aware, been unavailing up to the present moment. Now, it has been contended that the absence of any reference to stock of no par or face value in Section 202 (b) in connection with reorganizations, mergers or consolidations, evidenced an intention on the part of Congress to limit the special provision to those reorganizations, mergers or consoli-

dations which involve the exchange of stock, securities or property for new stock or securities of no greater **par or face value** only, and that such transactions involving new stock or securities having in fact no face or par value are to be treated as coming within the first provision of the subsection reading:

"When property is exchanged for other property, the property received in exchange shall for the purpose of determining gain or loss be treated as the equivalent of cash to the amount of its fair market value, if any."

It is further argued that the omission of some such defining provision as is quoted above from the Excess Profits Tax Title, from Section 202(b) in the Income Tax Title, where stock of face or par value is specifically mentioned, has the same effect, so far as the Income Tax Title is concerned, as does the actual writing of the words into Title III, where direct reference to stock having par or face value is omitted.

News items which appear in the public press from time to time, relative to tax matters, are indicative frequently of an insufficient knowledge on the part of taxpayers of their full privileges under the income and excess profits

tax laws. This was emphasized recently by the appearance of comment to the effect that luxury taxes, taxes on admissions to theatres and other places of entertainment, taxes on railroad transportation, and particularly the excise taxes on the sale of certain manufactured articles by the manufacturers thereof, are allowable deductions by the persons paying the taxes, or on whose behalf they are paid, in determining net taxable income. Those familiar with the law and all of the Bureau's rulings have been aware that such taxes are deductible, and the forms themselves seemingly made this plain, inasmuch as it is set forth very clearly that all Federal taxes, other than income and excess profits taxes, are deductible.

Inventories. Another news item recently appearing, of very different import, however, lead many taxpayers, apparently, to believe that a special amendatory ruling relative to the matter of inventories had been issued. This was contrary to fact, however, the press stuff merely calling attention to a statement made by the Bureau of Internal Revenue to the effect that it was becoming evident, as the auditing of returns for the taxable years 1917 and 1918 progressed, that the use of erroneous methods in making in-

ventories was not at all uncommon, the implication being that, in some instances at least, erroneous methods were adopted for the purpose of reducing tax liability. The Government has announced that in cases of voluntary disclosure, before investigation, of failure to make proper return and payment of tax, its policy will be to forego penalties, except where there is intentional evasion of the law, but that where discovery is made by the Government itself, through its inspectors or otherwise, heavy penalties will apply.

It is understood that considerable embarrassment has been caused to citizens of the United States, about to depart to points abroad, because of the fact that it was not fully realized that even an American citizen applying for a sailing permit should be prepared to satisfy the Internal Revenue Agent in charge that he has paid all installments of his income tax due to the date of departure, and has made arrangements for the payment of future installments as they become due. The embarrassment is usually caused to those whose homes are at some distance from the port of departure and who have not acquainted themselves with the provisions relative to the matter before leaving for the embarking point.

Alabama

State Income Tax. Chapter 328 of the Laws of 1919 provides for the payment of an Income Tax by individuals and corporations. Each corporation doing business in this state is required to make a return to the State Tax Commission within thirty (30) days after the company makes its income tax return to the Federal Treasury Department, but in any case not later than June 1st. This return is to be made on forms supplied by the State Tax Commission. In case a corporation fails to make a return, it is subject to a fine of not less than \$10, nor more than \$1,000, and the Tax Commission assesses the tax from the best information obtainable, and a penalty of not more than 25% is added to the amount of the tax.

The tax becomes due and payable between October 1st and January 1st and is paid to the State Auditor. Domestic corporations pay the tax on their entire net income and foreign corporations on the entire net income of the property situated in the state. The rates range from 2% on net income not exceeding \$5,000 to 4% on net income in excess of \$15,000. Domestic corporations are allowed a specific credit of \$2,000, and foreign corporations are allowed that proportion of \$2,000 its gross income in the state bears to the entire gross income of the corporation.

In connection with the personal income tax, every corporation paying salaries, wages, commissions and other fixed and determinable, annual or periodical compensation of whatever kind, if the amount equals or exceeds \$1,000, is required to withhold 3% of such amounts unless the payee files a certificate to the effect that he is a resident of the state. The withholding agent is required to make a return and pay the taxes withheld to the State Auditor on or before March 15th.

Every withholding agent shall make a return to the State Income Tax Supervisor of complete information covering amounts of \$1,000 or more paid to tax payers taxable under the Act.

New York

Constitutionality of New York Income Tax Law. Argument will be heard before the Supreme Court on December 8, 1919, in the case of Eugene M. Travis, Comptroller of the State of New York, vs. Yale and Towne Manufacturing Co., in which the constitutionality of the New York State Personal Income Tax Law is assailed in regard to certain of its provisions imposing an income tax on non-residents. The case is an appeal from a decision against the State.

Personal Property Taxes. Many foreign corporations which are subject to the New York State Income Tax were surprised to receive from the Department of Taxes and Assessments of New York City, notices of assessment upon personal property located in this city. These companies felt that they were exempt from personal property taxes in accordance with the provisions of Section 219 J of the Tax Law. The City Department, however, holds that the exemption from personal property assessment permitted by this section, applies only to domestic corporations, and that foreign corporations are still subject to taxes on personal property. The State Tax Department has recently ruled that in their opinion, corporations which are subject to the Income Tax are exempt from personal property taxes under Section 7 and 12 of the Tax Law. A decision recently handed down by the Supreme Court in Genesee County seems to confirm the opinion of the State Tax Department. For copy of this ruling and decision see The Corporation Trust Company's New York State Income Tax Service, addenda page 29 et seq.

Collection of Large Inheritance Taxes on Stock of New Jersey Corporations Draws Attention to Opposite Situation in Delaware. The United States Supreme Court has just sustained the inheritance tax law of New Jersey in two cases involving taxation of stock of New Jersey corporations owned by non-resident decedents, namely James McDonald and

James J. Hill. James McDonald died January 13, 1915, owning stock in the Standard Oil Company, a New Jersey corporation, valued at \$1,114,965, leaving an entire estate of \$3,969,335.25, which included some real estate in Idaho. Of the entire estate \$279,813.17 went to pay debts and expenses of administration. The amount assessed by New Jersey for inheritance tax was \$29,071.68. James J. Hill died May 29, 1916, intestate, leaving an estate valued at \$53,814,762. The only property the transfer of which was subject to taxation in New Jersey was stock in the Northern Securities Company, a New Jersey corporation, valued at \$2,317,564.68. The amount assessed by New Jersey for inheritance tax against the Hill estate was \$67,018.43. Following the New Jersey statute, the taxes were first ascertained on the entire estates as if they were the estates of residents of New Jersey, with all the decedent's property, both real and personal, located there; the taxes were then apportioned and assessed in the proportion that the taxable New Jersey estate bore to the entire estate. The thing complained of before the Supreme Court was that applying the apportionment formula fixed by the statute, resulted in a greater tax on the transfer of property of the estates subject to the jurisdiction of New Jersey than would be assessed for the transfer of an equal amount, in a similar manner, of property of a decedent who died a resident of New Jersey. The cause of this inequality is said to arise because of imposing the graduated tax, provided for by the statute, upon large estates. The majority of the Supreme Court, however, holds that the inequality is not so wholly arbitrary and unreasonable as to be beyond the legitimate authority of State of New Jersey. They are of the opinion that there are substantial differences between residents and non-resident estates which permit the classification accomplished by the statute. Justice Holmes filed a dissenting opinion concurred in by the Chief Justice and by Justices Van Devanter and McReynolds. *Lawrence Maxwell and Fulton Trust Co. v. Bugbee*, U. S. Supreme Court (Nos.

43 and 238—October Term, 1919).

By way of contrast the foregoing decision emphasizes the situation with respect to shares of stock of a Delaware corporation owned by a non-resident estate. Not only does Delaware not attempt to assess such taxes, but the Constitution of Delaware in Section 6 of Article IX provides: "Shares of the capital stock of corporations created under the laws of this State, when owned by persons or corporations without this State, shall not be subject to taxation by any law now existing or hereafter to be made."

Pennsylvania

Stamp Tax on Transfers of Stock to Trustee and Re-Transfer Thereof. A corporation transfers to a trust company an issue of its stock or the stock of other companies owned by it. The trust company holds the stock as trustee to secure the payment of collateral notes issued by such corporation and subsequently other certificates of stock are substituted for the stock originally issued, and when the notes or a part of them are paid, the stock held to secure them is re-transferred by the trustee back to the corporation.

The Attorney General's department holds that the certificates of stock are taxable at two cents on each one hundred dollars of face value, pursuant to Section 1 of the Act of June 4, 1915, P. L. 828, both upon the transfer to the trustee and the transfer from the trustee to the corporation. 5 Dpt. Rep. of Penn. 1631.

DOMESTIC CORPORATIONS

(Continued from page 64.)

Virginia

Non Par Value Law Amended— Continued.

"6. All acts or parts of acts providing for the incorporation, organization, administration and management of the affairs of corporations organized under the laws of this State in-

consistent with this Act, are, as respects corporations having shares without nominal or par value, hereby repealed; provided, however, that all such acts or parts of acts are, in all other respects, as respects corporations having shares without nominal or par value, expressly continued in full force and effect.

"7. An Act entitled An Act to provide for the issuance of shares of capital stock of corporations organized under the laws of this State without nominal or par value, approved March sixteenth, nineteen hundred and eighteen, being chapter three hundred and fifty-three, acts of nineteen hundred and eighteen, is hereby repealed."

New York

Defense of Failure of Foreign Corporation to Qualify Is Favored. The Appellate Division, First Department, holds that in an action by a foreign corporation upon a contract made by

it within this State the defense that the corporation had not obtained a certificate of authority may be alleged in an amended answer, although known to the defendant at the time the original answer was served. Justice Page says: "The penalty for failure to comply with the statute is the prohibition to maintain any action in this State upon any contract made by it within the State. It is a part of the public policy of the State with reference to foreign corporations. Where a foreign corporation comes into this State and transacts its business here, it owes obedience to the laws in force here. (*German-American Coffee Co. v. Diehl*, 216 N. Y. 57.) It is primarily to compel obedience to our laws by such a corporation that the prohibition is imposed, and not that the defendant may repudiate a contract obligation. Therefore, such a defense should be allowed to be set up in furtherance of public policy, and the defendant should not be limited by strict rules." *Bradford Co. v. Dunn*, 188 N. Y. App. Div. 454.

PUBLICATIONS

The following publications may be obtained without charge from the nearest office of The Corporation Trust Company System:

New York State Personal Income Tax Law, text in full of the Act passed by the Legislature, April 19, 1919, and approved by the Governor, May 14, 1919.

New York Corporation Income Tax Law, as amended by the 1919 Legislature. *War Revenue Act*, 1918, is the title of our pamphlet, which contains a complete copy of the text of the new Federal tax law, approved by the President, February 24, 1919.

Issuance, Transfer and Registration of Corporate Stock is the title of a pamphlet printed to supply the demand for information on these subjects.

The Corporation Journal issued monthly except in July and August.

Business Corporations Under the Laws of Delaware is the title of a pamphlet containing the advantages of the law, statutory requirements and forms, including a description of shares without par value. The General Corporation Laws are published in a separate booklet.

The General Corporation Act of New Jersey as published by the Department of State, may be secured at any of our offices.

Illinois General Corporation Act and Securities Law.

Business Corporations Under the Laws of Maine is the title of a pamphlet which contains a description of advantages of incorporation under Maine laws, features of shares without par value, statutory requirements and forms. The text of the statutes relating to business corporations is also available in a separate pamphlet.

New York Non-Par Value Law, a reprint of Corporation Journal No. 35, contains a copy of the New York non-par value law and a copy of the certificate of incorporation of the Wisconsin Edison Company, the first large company incorporated thereunder.

(Continued on page 79)

SOME IMPORTANT MATTERS FOR NOVEMBER, DECEMBER AND JANUARY

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. The State Report and Tax Service maintained by The Corporation Trust Company System sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information regarding forms, practice and rulings.

ALASKA—Annual Applications for Licenses on certain occupations due on or before January 15.—Domestic and Foreign corporations and persons.

Annual License fee due on or before January 1.—Domestic and Foreign corporations.

ALABAMA—Annual Franchise Tax payable January 1.—Foreign and Domestic corporations.

Annual Fee for Permit to do Business, due January 1.—Foreign corporations.

Annual Franchise Tax Statement due between November 1 and December 15th.—Domestic and Foreign corporations.

Annual Income Tax due between October 1 and January 1.—Domestic and Foreign corporations.

CALIFORNIA—Annual License Tax due between January 1 and 1st Monday of February.—Domestic and Foreign corporations.

Capital Stock Affidavit due between January 1st and 1st Monday of February.—Foreign corporations.

COLORADO—Annual Report due within 60 days after January 1.—Domestic and Foreign corporations.

DELAWARE—Annual Franchise Tax Return due on or before first Tuesday in January.—Domestic corporations.

GEORGIA—Annual Franchise Tax due on or before January 1.—Domestic and Foreign corporations.

INDIANA—Annual Report due during January.—Domestic corporations.

KANSAS—Annual Report and Franchise Tax due between January 1 and March 31.—Domestic and Foreign corporations.

KENTUCKY—Annual Report due on or before February 1st.—Domestic and Foreign corporations.

MARYLAND—Annual Report due between January 1 and March.—Domestic corporations.

MASSACHUSETTS—Annual Report of information for income tax due between January 1 and March 1.—Domestic and Foreign corporations.

MICHIGAN—Annual Report due in January or February.—Domestic and Foreign corporations.

MISSOURI—Annual Return of Net Income due between January 1 and March 1.—Domestic and Foreign corporations.

Annual Capital Stock Report due on or before February 1.—Domestic and Foreign corporations.

MONTANA—Annual Report due between January 1 and March 1.—Foreign corporations.

Annual Return of Net Income due between January 1 and March 1.—Domestic and Foreign corporations.

NEW MEXICO—Annual Income Tax Report due between January 1 and March 1.—Domestic and Foreign corporations.

Annual Franchise tax due on or before November 30.—Domestic and Foreign corporations.

NEW YORK—Annual Franchise Tax payable on or before January 15.—Domestic and Foreign corporations, excluding mercantile and manufacturing companies.

Annual Report due during January.—Domestic and Foreign corporations.

Capital Stock Reports due between November 1 and December 15.—Domestic and Foreign corporations.

Annual Franchise Tax on Income of Business Corporations due between November 1 and January 1.—Domestic and Foreign Business corporations.

NORTH CAROLINA—Annual Franchise Fee due on or before first day of December or any time after October 15.—Foreign corporations.

PENNSYLVANIA—Capital Stock Report and Corporate Loan Report due between January 1 and February 28.—Domestic and Foreign corporations.

Bonus Report due between January 1 and February 28.—Foreign corporations.

SOUTH CAROLINA—Annual Report due during January.—Foreign corporations.

SOUTH DAKOTA—Annual Capital Stock Report due during January.—Foreign corporations.

TEXAS—Annual Capital Stock Report due during January.—Foreign corporations.

UTAH—Corporation License Tax due between November 15 and December 15.—Domestic and Foreign corporations.

WISCONSIN—Income Tax Return due between January 1 and date fixed annually by State Tax Commissioner.—Domestic and Foreign corporations.

PUBLICATIONS—Continued from page 76.

Extracts from the Statutes of the Various States Relating to the Admission of Foreign Business Corporations may be had by counsel who are interested in the qualification of a particular corporation in a State or group of States. Kindly advise which State you are interested in. These printed statements show the documents to be filed, fees and taxes to be paid and the statutory penalties for failure to comply in the States under consideration.

Transfer Requirements is the title of a card containing a list of the requirements to be observed in transferring various classes of stock in New York.



When the discussion turns to taxes, when an accurate solution is required, when an authority must be consulted, then—invariably—the nation's business reaches for the tax Services of The Corporation Trust Company.

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